

FOMB POLICY: REVIEW OF RULES, REGULATIONS, AND ORDERS¹

Authority

This FOMB Policy (the “Policy”) is established pursuant to Section 204(b)(4) of PROMESA to require prior FOMB approval of certain rules, regulations, administrative orders, and executive orders proposed to be issued by the Governor (or the head of any department or agency) to assure that they “are not inconsistent with the approved fiscal plan.” This Policy shall also apply as provided in Section 204(b)(5).

Applicability

As stated above, any rule, regulation, administrative order, or executive order that is proposed to be issued in connection with or that concerns financial aspects of the most recent Certified Fiscal Plan of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality (excluding municipalities) (the “applicable Certified Fiscal Plan”). This includes, but is not be limited to, the following areas:

- 1) Any rule, regulation, administrative order, or executive order related to revenue generation and/or distribution, tax incentives or credits, or any other fiscal plan compliance measure as it relates to either revenue or expenses included in the applicable Certified Fiscal Plan;
- 2) Any rule, regulation, administrative order, or executive order that is issued in connection with or that concerns rightsizing of the Commonwealth (which includes the Executive, Legislative and Judicial branches of government) or any covered instrumentality (excluding municipalities), including without limitation any rule, regulation, administrative order, or executive order related to employee compensation or benefits; and
- 3) Fiscal Plan focused laws and related regulations, including, but not limited to, Act 26-2017, Act 257-2018, Act 60-2019, and Act 73-2019.

In addition, the applicable Certified Fiscal Plan also provides for improvements to fiscal governance, accountability, and internal controls. Under this authority, FOMB may review any proposed rule, regulation, administrative order, or executive order that is issued which has the potential to impact fiscal governance, accountability, or internal controls under the applicable Certified Fiscal Plan. This includes, but is not be limited to, the following areas:

- 1) The PREPA Transaction, whether by the Public-Private Partnership Authority or the Partnership Committee, as contemplated by Act No. 120-2018;
- 2) Any rule, regulation, administrative order, or executive order that is issued, whether or not by the Patient Advocate, in connection with Act 47-2017;
- 3) Any rule, regulation, administrative order, or executive order that is issued in connection with the establishment, governance, management, or operation of the Office of the CFO; and

¹ Policy revised as of October 31, 2019.

- 4) Any rule, regulation, administrative order, or executive order that is issued in connection with or related to procurement, contracting policy, or outsourcing.

The FOMB reserves the right to expand the applicability of this Policy to additional rules, regulations, administrative orders, or executive orders. Furthermore, rules, regulations, administrative orders, or executive orders issued prior to date of adoption of this Policy shall, at the request of the FOMB, be subject to review by the FOMB to ensure that they do not “adversely affect the territorial government’s compliance with the Fiscal Plan.”

Requirements

Any rule, regulation, administrative order, and executive order to which this Policy applies must be consistent with the then-applicable Certified Fiscal Plan, or are not yet reflected in such fiscal plan but may be integrated into revised fiscal plans as deemed appropriate by the FOMB.

Process

Any rule, regulation, administrative order, and executive order must be sent in English before issuance to the FOMB at regs@promesa.gov. In addition, the promulgating agency must include in its submission an explanation of how the particular rule, regulation, administrative order, or executive order is compliant with the applicable Certified Fiscal Plan.

For any rule, regulation, administrative order, and executive order that is sent to the FOMB, the FOMB will respond within five business days of receipt of a proposed rule, regulation, or executive order and the required supporting documentation. That response will either be approved, rejected, or further information is needed. If the FOMB does not respond within five business days of receipt of a proposed rule, regulation, or executive order and the required supporting documentation, the agency may proceed to issue the rule, regulation, or executive order.

For the avoidance of doubt, the FOMB’s Code of Conduct applies to this Policy.